

Before the  
Federal Communications Commission  
Washington, D.C. 20554

FCC 89-272  
37746

In the Matter of )  
 )  
Amendment of Part 69 of the ) CC Docket No. 89-2  
Commission's Rules Relating to )  
the Common Line Pool Status of )  
Local Exchange Carriers Involved )  
in Mergers or Acquisitions )

REPORT AND ORDER

Adopted: August 4, 1989

Released: August 23, 1989

By the Commission:

I. INTRODUCTION

1. On April 1, 1989, fundamental changes in the mandatory common line pooling arrangements that have governed the recovery of the non-traffic-sensitive costs of local exchange carriers (LECs) were implemented pursuant to recommendations that were developed by the Federal/State Joint Board in CC Docket No. 80-286 (Joint Board)<sup>1</sup> and subsequently adopted by this Commission in our NTS Recovery Order, with certain minor modifications in the proposed implementation schedule for subscriber line charge increases.<sup>2</sup> The Joint Board recommendation did not address the effects that a merger or acquisition among LECs could have on the pooling status of surviving LECs, but instead recommended that we address this issue in a separate proceeding.<sup>3</sup>

2. On January 10, 1989, we adopted a Notice of Proposed Rulemaking (Notice)<sup>4</sup> inviting interested persons to comment on specific proposals regarding

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<sup>1</sup> See MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, 2 FCC Rcd 2324 (1987) (hereinafter Recommended Decision).

<sup>2</sup> MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, 2 FCC Rcd 2953 (1987), aff'd on recon., 3 FCC Rcd 4543 (1988) (hereinafter NTS Recovery Reconsideration Order), appeal pending sub nom. Public Service Commission of the District of Columbia v. FCC, No. 88-1661 (D.C. Cir. filed Sept 12, 1988).

<sup>3</sup> Recommended Decision at n. 194.

<sup>4</sup> Amendment of Part 69 of the Commission's Rules Relating to the Common Line Pool

the pooling status of LECs that have been involved in a merger or acquisition.<sup>5</sup> On February 16, 1989, an alternative proposal (Joint Proposal) was filed jointly by the National Rural Telecom Association (NRTA), the National Telephone Cooperative Association, the Organization for the Protection and Advancement of Small Telephone Companies, the United States Telephone Association (USTA), and the National Exchange Carrier Association (hereinafter the Joint Commenters or Joint Comments). Comments were also filed on that date by Contel Corporation (Contel) and the United Telephone System Companies (United). On March 3, 1989, reply comments were filed by Contel, Telephone and Data Systems (TDS), Rochester Telephone Corporation (Rochester), and ALLTEL Corporation (ALLTEL).

3. In this Order, we amend Sections 69.3 and 69.612 of our Rules<sup>6</sup> to specify the effects a merger or acquisition among LECs will have on the access charge plan's revised pooling arrangements. These changes generally adopt the recommendations of the Joint Commenters, subject to certain clarifications. Specifically, we allow LECs involved in mergers or acquisitions to retain their pretransaction pooling status indefinitely. We also adopt a rule which provides that a waiver of Section 69.3(e)(9) is required only if a net addition of more than 50,000 access lines to the NECA common line pool would result from a merger or acquisition. For those waiver requests, we adopt a sixty-day notice requirement, after which the LECs may proceed with the merger or acquisition unless certain events specified infra in paragraph 33 occur. Finally, we accept the Joint Commenters proposal that the 1988 base year data of the merged or acquired LECs be aggregated for calculating future Long Term Support (LTS) and Transitional Support (TRS) amounts. Each of these determinations is subject to the conditions that part of a study area may not be pooled and part nonpooled and that any change in LTS, TRS, or other pool related requirements may be made only on the effective date of the annual common line access tariffs. The rules we adopt in this order are designed to permit LECs to realize efficiencies possible from mergers or acquisitions, without fostering the selective reinsertion of high-cost study areas into the NECA common line pool through the manipulation of the merger or acquisition rules, which could undermine the pooling process.

## II. BACKGROUND

4. Under our current rules, any LEC may withdraw from the NECA common line tariff and pool and file common line tariffs based on its own costs, subject to certain conditions. Among these conditions are the "affiliate withdrawal" requirement, which requires LECs choosing to leave the pool and file their own common line tariffs to remove all their study areas, and departing holding companies

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Status of Local Exchange Carriers Involved in Mergers or Acquisitions, 4 FCC Rcd 740 (1989).

<sup>5</sup> See infra paras. 6-11.

<sup>6</sup> 47 C.F.R. § 69.3 and 69.612.

to remove all their affiliated companies.<sup>7</sup> Moreover, once a LEC (or group of affiliated LECs) leaves the NECA common line pool and files its own common line tariff, it may not participate in the NECA common line pool at a later date. Thus, this election opportunity is restricted by a "one-way" requirement.<sup>8</sup>

5. LECs that withdraw from the pool are required to make LTS payments to the NECA common line pool targeted to keep the pooled carrier common line (CCL) rates at the nationwide average level that would have resulted if all LECs had remained in the pool. The Joint Board concluded that this would enable LECs leaving the pool to establish more cost-based CCL rates without adversely affecting the rates charged by the LECs that remain in the pool.<sup>9</sup> In addition, four years of TRS payments are provided to qualifying LECs that withdraw from the pool. In order to qualify for TRS, a LEC must have been a net recipient from the pool in 1988 and must withdraw from the NECA common line tariff and pool in accordance with a specific timetable.<sup>10</sup> TRS is paid by nonpooling LECs that were net contributors to the pool in 1988. LECs receiving TRS are exempted from paying LTS during their TRS transition period.

### III. The Notice

6. In addition to serving the four fundamental goals of the access charge proceeding,<sup>11</sup> the Notice stated that any rules in this area should be as neutral as possible in terms of their effect on the underlying business decisions, not adversely affect the marketability of small LECs, and not impede transactions that offer legitimate advantages to the LECs and consumers involved. We also indicated that the approach adopted should not cause, or have the potential to cause, material or unexpected changes in the pooling structure. Finally, we stated that LECs should not be accorded flexibility to an extent that would cause major problems for NECA in administering the common line pool and associated TRS and LTS arrangements, or for this Commission in our review of the LECs' tariff filings.<sup>12</sup> We found that the current rules do not adequately address issues relating to the

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<sup>7</sup> Recommended Decision at para. 130.

<sup>8</sup> NTS Recovery Reconsideration Order at n. 17.

<sup>9</sup> See id. at paras. 100 & 111.

<sup>10</sup> In addition to the opportunity that LECs had to withdraw on April 1, 1989, smaller (Level II) LECs may qualify to receive TRS by electing to leave the NECA common line pool by December 31, 1989, effective July 1, 1990. See 47 C.F.R. §§ 69.2(v)-(w); 69.3(e)(9) & 69.612(b). LECs may leave the pool on an annual basis after these dates, but will be ineligible to receive TRS. See 47 C.F.R. § 69.612(b).

<sup>11</sup> Those goals are promoting economic efficiency, eliminating pricing discrimination, deterring bypass, and preserving universal service.

<sup>12</sup> Notice at paras. 7-9.

pooling status of LECs involved in a merger or acquisition.<sup>13</sup>

7. The Notice discussed a proposal of several LEC industry representatives that a LEC that acquired another LEC with a pooling status different from its own be permitted to determine at its option whether the acquired LEC should retain its current pooling status or convert to the status of its new affiliate(s), subject to a procedure for challenging any election that would have a substantial impact on the LTS obligations of nonpooling LECs.<sup>14</sup> We tentatively concluded that the LEC industry proposal could have a substantial adverse impact on the revenue requirement of the common line pool, and thus on the LTS obligations of nonpooling LECs, because of the ability of LECs to structure transactions to take advantage of the support mechanisms. We also stated that the proposed procedure for challenging transactions was vague and undefined, and incorrectly placed on parties challenging a merger or acquisition the burden of showing that adverse effects would result. Finally, we expressed concern that the proposal's flexibility could result in a substantial number of holding companies having some of their affiliates in, and some out, of the NECA common line pool, thereby possibly complicating NECA's rate calculation and billing functions and our tariff review process, as well as creating undesirable cost allocation incentives for LECs with companies in different pooling positions.<sup>15</sup>

8. The Notice generally addressed situations in which a nonpooling LEC acquires or merges with a pooling LEC, or vice versa.<sup>16</sup> We identified three potential post-transaction pooling scenarios for which we proposed specific treatment: (1) both LECs desire to operate outside the NECA pool; (2) both LECs desire to be included in the NECA common line pool; and (3) each LEC desires to retain its preexisting status. We indicated that the effective date for any change in

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<sup>13</sup> Notice at para. 10.

<sup>14</sup> See Notice of Ex Parte Meeting between Federal Joint Board staff and Counsel to the NRTA and USTA, MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, filed January 14, 1987. Representatives of the USTA Unity I-A Coordinating Committee's Mergers and Acquisitions Subcommittee also discussed this proposal in an ex parte meeting with Commission staff on March 10, 1988. See Letter from M. Humphrey to Acting Secretary, FCC, dated March 10, 1988.

<sup>15</sup> Notice at paras. 11-15.

<sup>16</sup> The single exception to this is our proposal for treating LTS and TRS payments when two LECs outside the pool are involved in a merger or acquisition. We proposed that if the LECs involved are all LTS and TRS contributors, or all TRS recipients, their new LTS and/or TRS obligations or benefits should be calculated based on the combined 1988 base years of the LECs. If, however, a LEC that is an LTS/TRS contributor acquires or merges with a TRS recipient, we proposed that, for the duration of the transition period, the new LEC continue to make LTS and TRS payments according to the 1988 base year formula of the pretransaction contributor LEC, and continue to receive TRS according to the 1988 base year formula of the pretransaction recipient LEC. Notice at para. 25.

common line pooling status must coincide with the effective date of the annual tariff filing following consummation of the transaction.

9. The Notice indicated that mergers or acquisitions in which the involved LECs desire to operate outside the common line pool after consummation of the transaction are consistent with the existing "affiliate withdrawal" and "one-way" rules and the LTS rules applicable after the TRS transition period. However, we proposed specific rules relating to the LTS and TRS payments that would apply to the new entity or entities outside the pool when the departure from the NECA pool occurred during the transition period.<sup>17</sup> If the nonpooling LEC (Company A) was obligated to pay both LTS and TRS prior to the transaction, we proposed that the new LEC (or affiliated LECs) would be obligated to pay LTS and TRS according to a formula that adds together the 1988 base years of the separate pretransaction LECs. If Company A had been receiving TRS based on its 1988 base year, we proposed that TRS payments not be adjusted to reflect the effect of the merger or acquisition involving Company B (the pooling LEC). Moreover, if Company B had been a net recipient in the NECA pool at the time of its departure, we proposed that the surviving LEC or LECs not be required to pay LTS or TRS during the transition period. However, if Company B had been a net contributor to the pool, we proposed to require the surviving LEC or LECs to pay LTS and TRS based on the 1988 base year of Company B during the transition period. We observed that these procedures come close to maintaining the pretransaction status quo, minimize the impact on the overall pool support structure, protect the interests of small LECs, appear to serve the interests of administrative simplicity, and provide equitable treatment for all concerned.

10. LECs with different pooling positions might also seek to have the LEC outside the pool reenter the pool, either through a merger with the LEC already in the pool or by being acquired as an affiliate of the pooling LEC. We recognized that allowing a LEC that has left the pool to reenter the pool at a later date raises important concerns<sup>18</sup> and is inconsistent with our "no pool reentry" principle; nevertheless, we indicated that it might be appropriate, with certain safeguards, to apply a somewhat less restrictive rule in the circumstances of a merger or acquisition so that LECs would not be unduly deterred from negotiating an otherwise desirable transaction. To protect against adverse impact to the NECA common line pool, and indirectly to the LTS obligations of nonpooling LECs, we proposed that if a nonpooling LEC wishes to reenter the pool because it is involved in a merger or acquisition with a LEC in the pool, it must obtain a waiver from this Commission before it would be allowed to reenter the pool. To obtain such a waiver, LECs would have to demonstrate that the overall pooling structure would not be materially harmed, i.e., the reentry of the nonpooling LEC(s) into the pool would not have a substantial adverse effect on the pool's revenue requirement or significantly

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<sup>17</sup> Notice at paras. 19-24.

<sup>18</sup> We expressly stated that one of our concerns was that LECs might structure merger or acquisition transactions in ways designed to take advantage of the ability to reenter the NECA common line pool.

increase the LTS and/or TRS obligations of the remaining nonpooling LECs.<sup>19</sup>

11. Finally, a LEC acquiring or merging with another LEC with a different pooling status may desire to have each party to the transaction retain its pretransaction pooling position. We stated that such an option would be inconsistent with the principles underlying the affiliate withdrawal rule and expressed concern that the rules adopted not be used as a vehicle to circumvent this rule. We also expressed concern that an unlimited ability to leave acquired properties in the common line pool could create administrative difficulties for us, as well as NECA. Despite these concerns, we indicated that some flexibility might be appropriate to achieve sufficient neutrality regarding the marketability of LECs. We accordingly proposed as a first option that, when LECs with different pooling positions are involved in an acquisition, those LECs should be permitted to retain their pretransaction pooling positions for a three-year transition period following the consummation of the transaction. After this transition, the rules applicable to mergers or acquisitions in which all the involved LECs leave the pool would apply. Alternatively, we indicated that the acquired LEC could be permitted to remain in the pool as long as its costs exceed a fixed percentage of the nationwide average, e.g., over 150%. We indicated that the flexibility provided by either of these options would help ensure that our rules do not adversely affect the marketability of LECs, while protecting against sudden changes in the pooling structure, reducing manipulation of our pooling requirements, and minimizing the administrative difficulties that would result if LECs were given unlimited flexibility to maintain separate pooling positions for acquired LECs. We tentatively concluded that, of these two alternatives, the three-year "transition period" proposal would best serve the identified goals.<sup>20</sup>

#### IV. Positions of Parties

##### A. The Joint Proposal.

12. The Joint Commenters assert that we should allow pooling LECs involved in mergers or acquisitions with nonpooling LECs to continue their pretransaction common line pool status without the limitations proposed in the Notice.<sup>21</sup> They state that this will leave the composition of the pool unaffected, and, therefore, the primary purpose of the affiliate withdrawal rule is not brought into play. The Joint Commenters state that the industry support of Unity I-A did not contemplate that LECs would lose their eligibility for NECA common line pool participation by acquiring, or being acquired by, a nonpooling LEC. They claim that such a consequence would jeopardize the benefits this Commission, the Joint Board, and the industry sought to secure for high-cost LECs and their customers by allowing the choice of continued pooling. They further state that the three-year proposal is not neutral with respect to LEC marketability and could injure the

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<sup>19</sup> Notice at paras. 26-29.

<sup>20</sup> Notice at paras. 30-35.

<sup>21</sup> Joint Comments at 7-9.

ratepaying public. The Joint Commenters state that the Joint Proposal will maintain the existing support flows to high-cost properties without impacting the overall level of support.

13. The Joint Commenters assert that allowing LECs to maintain their pretransaction pool status will not create undue administrative burdens for NECA or this Commission. They note that NECA today is required to develop tariff filings and data submissions for holding companies with multiple tariffing statuses that we are reviewing on a routine basis. Moreover, they submit that most of the costs are incurred when the systems are initially established and state that their proposal best serves our goals.

14. The Joint Commenters also address the situation in which the nonpooling LEC in a merger or acquisition wishes to reenter the pool. They contend that some relaxation of the one-way requirement is desirable so that otherwise sound business decisions will not be deterred, although they posit that the NECA common line pool must be protected from material harm. They believe our proposal to require a waiver of Section 69.3(e)(9) for all transactions in which the parties desire to return the merged or acquired LEC property to the common line pool is overly broad, may deny support that subscribers need, and introduces unnecessary administrative burdens and uncertainties. The Joint Commenters state that the waiver process should be limited to situations in which significant dislocation is possible. Therefore, they propose that a waiver of Section 69.3(e)(9) should only be required if a net addition to the NECA common line tariff of more than 50,000 lines would result,<sup>22</sup> with the burden of demonstrating an acceptable impact placed on the LECs seeking reentry into the pool.<sup>23</sup>

15. Finally, the Joint Commenters propose the use of a consistent methodology for calculating the LTS and TRS payments of nonpooling LECs after mergers and acquisitions occur. The Joint Commenters specifically note the case in which a nonpooling, TRS receiving LEC and a pooling LEC merge and the pooling LEC is removed from the pool. They note that the Notice proposed making no adjustment to the TRS level in that case. This, they assert, could reduce the marketability of small LECs because a high-cost, nonpooling LEC may be unwilling or unable to absorb the additional cost of a pooling LEC. They propose that the 1988 base year data should be adjusted to reflect the changed configurations of the LECs involved, and the LTS and TRS amounts recalculated accordingly. The Joint Commenters state that while this methodology would necessitate minor adjustments to the support levels of nonpooling LECs, other aspects of the proposal would minimize the magnitude of those changes. They assert that this approach provides equitable treatment for all, is administratively less complex than our proposal, best preserves the marketability of small LECs, and directs the support being provided to the subscribers intended to

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<sup>22</sup> They state that if the highest cost, nonpooling study area under 50,000 lines were to reenter the common line pool, it would bring an \$800,000 support requirement. This amount, they submit, would increase the total LTS by 0.25% and would cause the largest contributor LEC's LTS support payment to increase by 0.1%.

<sup>23</sup> Joint Comments at 10-12.

be benefited.<sup>24</sup>

B. Other comments.

16. All the parties filing comments support the Joint Proposal. United notes that it and Contel will consummate an exchange of the assets of certain telephone properties on July 1, 1989, and that our action will affect the rates of the traded entities. Rochester states that only a rule permitting an acquired LEC to maintain its pooling status will preserve its value and be neutral with respect to the business decisions involved in a possible acquisition.

17. Contel's ultimate position, as reflected in its reply comments, is that LECs having different pooling statuses that are involved in mergers or acquisitions involving complete study areas should be permitted to maintain their pretransaction pooling statuses indefinitely.<sup>25</sup> It submits that our proposal would place artificial and unjustified limits on corporate or financial structures that could adversely affect the marketability of small LECs without providing any compensating benefits. Contel states that if acquired LECs were allowed to remain in the pool, other LECs' support requirements would not be increased. Moreover, Contel states that this does not present the opportunity for selective withdrawal that was the basis for the all-or-nothing restriction for the initial pool withdrawal elections. Contel agrees with the Joint Commenters that waivers to reenter the pool should only be required when more than 50,000 access lines would be brought back into the pool.

18. Finally, Contel proposes streamlining the waiver process to eliminate unnecessary and costly delays. It recommends an approach similar to that used by the Federal Trade Commission (FTC) and the Department of Justice (DOJ) in analyzing the antitrust implications of mergers and acquisitions under the Hart-Scott-Rodino Antitrust Improvements Act of 1974 (hereinafter Hart-Scott-Rodino Act).<sup>26</sup> Contel states that these procedures have worked satisfactorily and urges

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<sup>24</sup> Joint Comments at 12-15.

<sup>25</sup> Contel Reply Comments at 4. Contel's comments differentiate among stock acquisitions (transactions that result in the continuation of the acquired entity under new ownership), direct mergers (transactions in which one entity is merged into another), and asset transactions (transactions in which one entity obtains assets of another entity, and the separate legal existence of both entities is left intact). Initially, Contel argued that in the case of an asset transaction or direct merger, the acquired LEC should take on the pooling status of the acquiring LEC. Contel Comments at 4-10.

<sup>26</sup> Public Law No. 94-435, 90 Stat. 1383 (1986). Under that Act, parties to a definitive purchase agreement are required to file an application with the FTC and the DOJ that provides certain data concerning the involved entities. If the FTC or the DOJ do not request further information, or notify the parties of potential problems, within thirty days of the receipt of the application, the parties are free to close the transaction in question.



us to adopt a thirty-day notice procedure for mergers and acquisitions requiring the filing of a waiver request. Contel states that the thirty-day period would not be applicable if we requested additional information or time. Contel's proposal would, however, allow LECs to consummate transactions prior to the expiration of the thirty-day period with the understanding that the LECs were assuming the risk that the waiver might not be granted and the LEC(s) that desired to reenter the pool would not be allowed to do so.

19. ALLTEL generally supports the Joint Comments, noting its view that the 50,000 line threshold level for readmittance to the pool is overly conservative. ALLTEL opposes the imposition of any restrictions on the ability of a LEC to remain in the pool after a merger or combination with a LEC or properties outside the pool. ALLTEL states that we apparently assumed that such transactions constituted a threat to the goals behind the affiliate withdrawal requirement. It asserts that this assumption is flawed, stating that pooling and nonpooling LECs can coexist under the same holding company umbrella since the operating entity for pooling purposes is the study area, not the corporation. Therefore, it submits that as long as the study area is not split by being partially in or out of the pool, there should be no administrative problem in having both pooled and nonpooled study areas in the same corporate structure.

20. ALLTEL also argues that concerns about potential cost shifting are overstated because very few costs in its case are joint or common and thus allocated among study areas. It submits that the allocation of costs could be adequately controlled through nonstructural safeguards. Finally, ALLTEL states that the affiliate withdrawal rule was intended to prevent a holding company from withdrawing only its low-cost LECs from the pool, leaving the higher-cost affiliates to be supported by the pool. It suggests that that purpose has been achieved, and that any LEC or study area still in the pool has a right to be there, consistent with the public interest. ALLTEL claims that nothing in the affiliate withdrawal rule should require a LEC in the pool to leave it upon being acquired by, or acquiring, another LEC because there is no element of choice arising out of the transaction that would operate to skew the membership towards high-cost LECs.

21. TDS supports the Joint Proposal, stating that a reasonable opportunity for pool reentry and the ability to maintain the preexisting pool status of the acquiring and acquired LEC is essential to protect subscribers and LECs. It emphasizes that the Notice's proposal could undermine the pool modifications that became effective on April 1, 1989. TDS asserts that the Unity I-A agreement did not contemplate that the all-in or all-out rule would be used to impede future acquisitions or mergers supported by sound business reasons. TDS submits that adoption of our proposal could force LECs that have elected to remain in the NECA common line pool to forego beneficial mergers and acquisitions, or risk across-the-board ineligibility for participation in NECA's common line pool. Moreover, it states that denial of pool eligibility would cause an average schedule LEC to lose that status. TDS asserts that denial of average schedule status based on affiliation runs afoul of the ALLTEL decision.<sup>27</sup> TDS also asserts that allowing a

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<sup>27</sup> ALLTEL Corporation v. FCC, 838 F.2d 551 (D.C. Cir. 1988). In this case, the court remanded to this Commission for further consideration a rule that required

LEC to maintain its preacquisition status leaves the pool unchanged, and, thus, the rules proposed in the Notice are not needed to protect against harmful increases in the size of nonpooling LECs' LTS obligations to the pool. Finally, TDS states that cost shifting is not a concern because of regulatory prohibitions and supervision and indicates that the NECA traffic-sensitive pool has functioned well with commonly owned study areas both inside and outside the pool.

## V. Discussion

22. On April 1, 1989, a fundamentally different regulatory structure replaced a framework that for nearly five years had provided common line exchange access service to interexchange carriers through mandatory, nationally averaged pooled common line charges.<sup>28</sup> The new regulatory structure allows LECs to elect to leave the NECA common line pool and file common line tariffs of their own, subject to certain conditions, and institutes a system of LTS and TRS payments, as discussed above. Common line access tariffs of those LECs that left the NECA common line pool and associated tariff became effective on April 1, 1989.

23. An integral part of the implementation of this new regulatory procedure for the tariffing of common line access by LECs included the requirement that LECs electing to leave the NECA common line pool must withdraw all of their study areas from the pool and that holding companies must withdraw all of their affiliates.<sup>29</sup> As the Joint Board and this Commission reasoned in recommending the new procedure, a contrary approach would likely cause LECs to remove only their low-cost study areas, while leaving high-cost areas in the pool, and might establish improper incentives relating to the allocation of common costs between study areas in the pool and those that are withdrawn. The two orders concluded that unless a significant number of LECs withdrew their high- and low-cost companies, only an administrative change in the pooling process would result.<sup>30</sup> Thus, the affiliate withdrawal rule was deemed an essential element in the success of the new procedures.

24. LECs providing the vast majority of the nation's access lines have already withdrawn from the pool.<sup>31</sup> There is, however, still a second election date for smaller companies that wish to receive TRS, and, of course, LECs may leave the pool on annual election dates after that time with no provision for TRS. With the

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affiliated LECs to be either all average schedule companies or all cost companies.

28 See supra paras. 4-5.

29 This requirement applies irrespective of whether it is leaving on one of the first two annual departure dates or at any later annual date.

30 See Recommended Decision at para. 130; see also NTS Recovery Reconsideration Order at paras. 47-58.

31 See Letter from M. Humphrey, counsel for NRTA, to Ms. D. Searcy, Secretary, FCC, dated February 23, 1989.

initial regulatory transformation from a mandatory pooling of common line charges to an environment in which individual LECs may elect to file their own common line charges largely completed, we must now examine issues related to the treatment of the business or asset realignments among LECs that occur as a result of mergers and acquisitions.<sup>32</sup> These issues relate to the effect of mergers and acquisitions among LECs on the rules governing the pooling process, including the rights and responsibilities associated with LTS and TRS payments. These transactions are typically related to operating or investment objectives of the involved LECs as contrasted with changes resulting from modifications to regulatory requirements. Thus, as the commenting parties have urged, we focus on the efficiency and cost-saving opportunities offered by mergers and acquisitions and seek to avoid creating regulatory obstacles or disincentives to mergers or acquisitions that offer public interest benefits. However, we remain mindful of the concerns expressed in the Notice about the use by LECs of additional flexibility in the merger and acquisition area as a means to manipulate the rules in a manner that would undermine the revised pooling procedures.

25. Below, we address the three merger or acquisition scenarios among LECs with different pooling positions identified in the Notice for which we proposed specific treatment: (1) the surviving LEC(s) desire to operate outside the pool, (2) the surviving LEC(s) desire to operate within the NECA common line pool, or (3) the involved LECs desire to retain their pretransaction common line pooling status. In conjunction with the first scenario, we discuss the regulatory treatment of a merger or acquisition among nonpooling LECs. Finally, we discuss a few general matters relating to mergers and acquisitions.<sup>33</sup>

A. Merger or acquisition in which all LECs desire to be outside the pool.

26. The Notice contemplated that LECs with different pooling statuses might desire to operate outside the NECA common line pool after a merger or acquisition. Such an operating arrangement is consistent with Part 69 of our rules. However, the Notice recognized that clarification of the LTS and TRS rules was needed as they applied to LECs involved in mergers or acquisitions during the four-year transition period during which TRS payments are required of some

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<sup>32</sup> The Notice at note 16 proposed to treat exchanges of properties among LECs as if separate acquisitions were occurring and inquired whether any different rules were needed for exchanges of properties among LECs. No party commented on this matter. Therefore, we shall treat exchanges of properties among LECs as proposed in the Notice. Furthermore, we find no reason to adopt any different rules for exchanges of properties among LECs. We note that for purposes of determining if a waiver is required in connection with bringing additional access lines into the NECA common line pool, a netting of the access lines entering and leaving the pool should be made. For this purpose, the LEC must seek the same treatment for all of the properties acquired, *i.e.*, a LEC may not bring some properties acquired in a transaction into the pool, while leaving other properties outside the pool.

<sup>33</sup> For ease of reference, we use merger or acquisition of a LEC to include all of the LEC, or of one or more study areas of a LEC, unless the context otherwise indicates.

nonpooling LECs. Accordingly, as described in greater detail in paragraph 9, supra, we proposed a framework for the LTS and TRS rules that depended on the combination of contributor/receiver status of the LECs involved in the merger or acquisition. However, the Joint Commenters, as described more fully in paragraph 15, supra, proposed that the 1988 base year data of the involved LECs simply be adjusted to reflect the changed configurations of the LECs involved in the merger or acquisition, and the LTS and TRS amounts recalculated accordingly.

27. After reviewing the record in this proceeding, we conclude that the Joint Proposal's unopposed plan to adjust the 1988 base year data of the involved LECs to reflect the changed configurations of LECs involved in mergers or acquisitions and to recalculate the LTS and TRS amounts will produce a more equitable result and will be easier for NECA to administer. Our proposal did not always take into account the acquired pooling LEC's 1988 base year position when determining the level of TRS payments a nonpooling LEC could receive after a merger or acquisition, e.g., our proposal not to adjust TRS payments when a nonpooling, TRS recipient merged with a pooling LEC and removed the operations from the pool. While the Joint Commenters' proposal in this area will cause some small shifts in the amount or support any one LEC may have to pay, it appears from the record that any shift that might occur would not materially affect the support payments of any LEC not involved in the transaction.<sup>34</sup> In fact, the results will be more equitable to all involved in the LTS and TRS process for two reasons. First, the relative high- or low-cost nature of the pooled LEC compared to the cost level of the nonpooling LEC results in the LTS and TRS payments or TRS receipts of the nonpooling LEC reflecting the cost pattern of the pool LEC.<sup>35</sup> Second, if the pooling LEC is a high-cost LEC, as is frequently the case, that LEC will no longer be a factor in determining the amount of LTS required by the NECA common line pool, which will reduce the total LTS required to support the pool.

28. We recognize that the Joint Proposal will permit study areas of pooling LECs that are involved in mergers or acquisitions to be included in a nonpooling LEC's 1988 base year data and thus effectively receive TRS payments for the remaining one, two, or three years that the nonpooling LEC may be eligible to receive TRS payments. This result is not inequitable since we do not expect substantial support dollars to be affected. For example, in many cases, the study area, since it has elected to stay in the pool, may likely be a high-cost study area which requires a higher LTS payment from nonpooling LECs. Thus, if that LEC were to leave the pool, the LTS requirement would be reduced and replaced with a smaller, declining TRS payment.

29. Finally, the Joint Commenters, one of whom is NECA, indicate that the difficulty of administering the LTS and TRS programs will be reduced if the Joint Proposal is adopted. Therefore, we will adopt the Joint Proposal's approach for combining the 1988 base year data for LECs involved in mergers or acquisitions in

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<sup>34</sup> Joint Comments at 15.

<sup>35</sup> Thus, a nonpooling LEC that acquires a higher cost pooling LEC will have its LTS and TRS obligations reduced, or its TRS receipts increased to reflect the acquisition.

which the surviving LEC(s) operate outside the NECA common line pool. We will also apply this adjustment to those mergers and acquisitions among nonpooling LECs irrespective of whether both LECs are contributors or receivers, or whether one LEC pays LTS and TRS and the other receives TRS. This will harmonize the treatment of all mergers and acquisitions in which the surviving LEC(s) operate outside the NECA common line pool.

B. The surviving LEC(s) desire to operate within the NECA common line pool.

30. The second scenario involves LECs with different pooling positions in which the nonpooling LEC seeks to reenter the pool, either through a merger with a LEC already in the pool or by being acquired as an affiliate of a pooling LEC.<sup>36</sup> As outlined more fully in paragraph 10, supra, we proposed that a waiver would be required before a LEC in such a situation would be allowed to reenter the pool. The Joint Commenters believe the waiver process should be limited to situations in which significant dislocation is possible. They propose that a waiver of Section 69.3(e)(9) should only be required if a net addition to the NECA common line pool and tariff of more than 50,000 lines would result from the transaction.

31. After reviewing the record, we conclude that our proposal to require a waiver whenever a LEC proposes to have a nonpooling LEC reenter the NECA common line pool as a result of a merger or acquisition would be overly restrictive. As we noted in the Notice, this is an area in which some flexibility could enable the acquiring or surviving LECs to consolidate its operations and to take advantage of the benefits of participation in the NECA common line pool and tariff if that is deemed best for the LEC and its customers.<sup>37</sup> We conclude that a waiver should only be required if significant dislocation is possible, as suggested by the Joint Commenters. According to the Joint Commenters, if the highest cost, nonpooling study area under 50,000 access lines were to reenter the NECA common line pool, the LTS requirement would only be increased by \$800,000, which would increase the total LTS by 0.25% and would cause the largest contributor LEC's LTS payment to increase by 0.1%.<sup>38</sup> The Joint Comments have persuaded us that transactions that bring 50,000 or fewer access lines back into the NECA common line pool will have a de minimis impact on the pool. Since mergers and acquisitions are events that occur relatively infrequently, and because we expect that mergers and acquisitions will cause LECs to move out of the pool, as much or more than, into the common line pool, the effect of any aggregation of mergers and acquisitions should also not materially affect the pooling process. If, however, future developments indicate a gradual but pronounced trend of movement into the pool, we may of course wish to revisit this

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<sup>36</sup> If a pooling LEC merges with or acquires another pooling LEC, the surviving LEC(s) would not have the option to change their pooling status except pursuant to our existing rules. If a nonpooling LEC merges or acquires another nonpooling LEC, the surviving LEC(s) could not reenter the pool.

<sup>37</sup> Notice at para. 26.

<sup>38</sup> Joint Comments at 12 n. 13.

decision.<sup>39</sup> We therefore adopt the Joint Proposal's position that a waiver should only be required when the transaction would result in a net addition of more than 50,000 access lines to the NECA common line pool. This will reduce the uncertainty associated with mergers or acquisitions that clearly would have little impact on the pool and will reduce the paperwork involved in completing a merger or acquisition transaction. This should benefit the LECs and the consumer, without having an adverse impact on the administration of NECA's common line pool functions.

32. Those mergers or acquisitions in which more than 50,000 access lines would reenter the NECA common line pool require a waiver under both our approach and that of the Joint Commenters. Furthermore, under either approach, the involved LECs would have the burden of demonstrating that an adverse impact would not occur. The Notice indicated that in order to obtain a waiver, LECs would have to demonstrate that the overall pooling structure would not be materially harmed. Specifically, the petitioning LECs would have to show that the reentry of the nonpooling LEC(s) into the pool would not have a substantial adverse effect on the pool's revenue requirement and would not significantly increase the LTS and/or TRS obligations of the remaining nonpooling LECs. No party commenting in this proceeding addressed the waiver standard beyond indicating that the burden would be on the petitioning LECs. Since the Joint Comments and the comments supporting it all recognized that a waiver would be required in some cases before reentry to the NECA common line pool would be allowed, we take their silence on the standard issue as concurrence with the standard we proposed. Accordingly, we find the waiver standards proposed in the Notice appropriate for those mergers and acquisitions proposing that more than 50,000 access lines be allowed to reenter the NECA common line pool. We do not specify any particular format for the waiver petition. However, it should clearly identify the involved properties, including information at the study area level, and should specify the anticipated impact on the revenue requirement for the NECA common line pool and the level of the LTS and TRS payments of nonpooling LECs.<sup>40</sup> Finally, we delegate to the Chief of the Common Carrier Bureau the authority to act on the waiver requests.

33. Contel proposes streamlining the waiver process through the use of a thirty-day notice procedure similar to that used by the FTC and the DOJ in

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<sup>39</sup> Information on material changes will be included in the Form M reports filed by subject carriers. Furthermore, mergers and acquisitions in which partial study areas are involved will come to our attention through the Part 36 waiver process. Finally, to aid us in our monitoring of the effects of mergers and acquisitions, we expect NECA to include in its support materials for its annual common line tariff filing information on the mergers and acquisitions that shifted properties in or out of the pool during the preceding year and their effect on the NECA common line pool's revenue requirement and the LTS and TRS payments of nonpooling LECs.

<sup>40</sup> No party has identified any special confidentiality issues relating to the data required to support a waiver request. Accordingly, the normal confidentiality rules applicable to Freedom of Information Act requests will apply. 47 C.F.R. § 1.459. However, a LEC requesting confidential treatment for some information associated with its waiver request may not avail itself of the sixty-day notice procedure discussed in paragraph 33.

analyzing the antitrust implications of mergers and acquisitions under the Hart-Scott-Rodino Act.<sup>41</sup> The concept of a notice period similar to that in the Hart-Scott-Rodino Act offers some administrative savings to this agency and offers an important planning horizon for the involved LECs. We adopt a plan along the lines proposed by Contel. As noted earlier, telephone companies involved in mergers or acquisitions that wish to have more than 50,000 common lines reenter the NECA common line pool must request a waiver of Section 69.3(e)(9) of our rules. A thirty-day notice period, as proposed by Contel, would be too short since we intend to invite public comment on all waiver requests before we make a final decision on the waiver request. We find sixty days from the public notice of the waiver request to be more compatible with our procedures.<sup>42</sup> Accordingly, the waiver request will be deemed granted on the sixty-first day from the day of public notice inviting comment on the requested waiver unless: (1) we reject the waiver request prior to the expiration of the sixty-day period; (2) we request additional time or information to process the waiver application; or (3) a party, in a timely manner, opposes a waiver request or seeks conditional approval of the waiver in response to our public notice of the waiver request. The adoption of this notice procedure does not alter the burden that the LECs involved in the merger or acquisition have to demonstrate that the overall pooling structure would not be materially harmed if the merger or acquisition were to be approved. Furthermore, the notice procedure shall not be available to the LECs involved in the transaction if the merger or acquisition involves the exchange of a partial study area for which a waiver of a frozen study area is required under Part 36 of our rules. In that case, any waiver of Part 69 of our rules that is required in conjunction with a merger or acquisition should be requested as a part of the Part 36 waiver request and will be responded to in that proceeding. Finally, the notice procedure shall not be available if the waiver includes a request for confidentiality of some or all of the materials supporting the request, or the waiver includes a request to return only a portion of the telephone properties involved in the transaction to the NECA common line tariff.

34. We note that this flexibility is designed to permit uniformity of regulatory treatment. Thus, it is the intention here to permit LECs to reenter the pool to consolidate their operations under one set of regulatory rules. It is not our intention that LECs be permitted to reinsert in the pool selected study areas or affiliates merely as a result of the acquisitions of a single pooling LEC, *i.e.*, the LECs involved in the merger or acquisition may not decide to have only part of the nonpooling properties included in the merger or acquisition reenter the pool. Such a result could invite substantial manipulation of the rules and undermine the pooling process.

C. The involved LECs desire to retain their pretransaction common line pooling

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<sup>41</sup> See *supra*. para. 17.

<sup>42</sup> This slightly longer time period should not adversely affect the majority of mergers or acquisitions. The LECs involved in the transaction may of course seek expedited consideration if that length of time is unworkable. Any expedited request should bear in mind that we do not intend to waive the opportunity for meaningful public comment prior to acting on a waiver request.

status.

35. The final merger or acquisition arrangement to be considered involves a LEC acquiring, or merging with, another LEC with a different pooling status in which the LECs desire to retain their pretransaction pooling positions. The Notice proposed that when LECs with different pooling positions are involved in an acquisition, those LECs should be permitted to retain their pretransaction pooling positions for a three-year transition period following the consummation of the transaction, after which the rules applicable to mergers or acquisitions in which the involved LECs leave the pool would apply. Alternatively, we indicated that the acquired LEC could be permitted to remain in the pool as long as its costs exceed a fixed percentage of the nationwide average, e.g., over 150%. As detailed more fully in paragraphs 12 and 13, supra, the Joint Commenters urge that we allow pooling LECs involved in mergers or acquisitions with nonpooling LECs to continue their pretransaction common line pool status without the limitations proposed in the Notice.

36. As discussed above, the Notice identified several criteria for evaluating alternative proposals.<sup>43</sup> Evaluated by these objectives, the proposals before us offer different incentives to LECs contemplating a merger or acquisition.<sup>44</sup>

37. The Joint Proposal's approach which would allow LECs to maintain their pretransaction pooling statuses is clearly the most neutral and preserves LEC marketability to the maximum extent because it does not impose regulatory consequences as a result of the merger or acquisition. Rochester states that a rule will be neutral with respect to the business decisions involved in a possible acquisition and will preserve the value of an acquired LEC only if the acquired LEC is permitted to maintain its pooling status. The ability to leave a pooling LEC in the pool will also ensure that no adverse effects result to the CCL rate of the acquiring or acquired LEC. The three-year option would provide some relief to the acquiring LEC during the process of absorbing the acquired pooling LEC and realizing any cost savings possible from consolidated operation. However, since the benefit would be lost after three years, it is, as the Joint Commenters assert, not pooling neutral and could adversely affect the marketability of LECs receiving substantial benefits from pool participation. For example, if a high-cost pooling LEC were required to leave the pool in a merger or acquisition, the CCL rate of the acquired or acquiring LEC, and the amount of the LTS payments that the combined LEC would have to pay after the transition period, might be raised, thereby making acquisitions of high-cost pooling LECs less attractive. We believe, and the record supports, that mergers and acquisitions can introduce greater efficiencies and economies in the provision of local exchange service. Thus, we seek to avoid a structure whereby a pooling LEC might not acquire a neighboring nonpooling LEC that offered sound

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<sup>43</sup> See supra para. 6.

<sup>44</sup> Whether these incentives by themselves would be determinative of whether a merger or acquisition would take place cannot be stated with certainty. Many factors enter the decision-making process, perhaps most significantly tax considerations.



business opportunities, and potential public interest benefits, if it meant that the pooling LEC would have to leave the pool at some point.

38. After carefully reviewing the incentives, and weighing them against the objectives of this proceeding, we conclude that allowing LECs to maintain their pretransaction pooling positions will best serve the public interest.<sup>45</sup> As the parties stress, this will not result in any increase in the support amount required for the NECA common line pool since no LECs will be reentering the pool under this scenario.<sup>46</sup> Furthermore, the commenting parties, including NECA which will bear important administrative functions, assure us that the Joint Proposal does not present administrative problems in its implementation.<sup>47</sup>

39. The Notice expressed the view that allowing LECs to maintain their pretransaction pooling positions when they were involved in a merger or acquisition would be inconsistent with the principles underlying the affiliate withdrawal rule and expressed concern that the rules adopted not be used as a vehicle to circumvent this rule. However, the Notice indicated that some flexibility might be appropriate to achieve sufficient neutrality regarding the marketability of LECs.

40. The comments strenuously assert that the affiliate withdrawal rule is not implicated by their merger or acquisition proposal. The Joint Commenters and TDS assert that the industry support of Unity I-A did not contemplate that LECs would lose their eligibility for NECA common line pool participation by acquiring a nonpooling LEC or being denied the opportunity to elect to maintain the status quo relative to NECA tariff participation. Contel and ALLTEL state that allowing LECs to retain their pretransaction pooling positions does not present the opportunity for selective withdrawal that was the basis for the all or nothing restriction for the initial pool withdrawal elections.

41. The affiliate withdrawal rule assures that the benefits of the policy modifications are not substantially undermined by selective withdrawal from the pool in connection with the departure of a LEC from the pool.<sup>48</sup> The Joint Commenters, however, assert that applying the affiliate withdrawal rule in a manner that denies LECs the ability to maintain their pretransaction pooling statuses in

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<sup>45</sup> The record does not contain any information or comment relating to our alternative proposal to use a cost-level criteria, such as 150% of a national average cost, to determine which LECs might remain in the NECA common line pool after a merger or acquisition. Given that fact, and because we have concluded that the proposal offered by the Joint Commenters reasonably serves our various goals, we need not address that alternative.

<sup>46</sup> The Joint Commenters, Contel, and TDS state that if acquired LECs were allowed to remain in the pool, other LECs' support requirements would not be increased.

<sup>47</sup> We note that if this option is selected, the involved LECs are not free to remove some study areas from the pool, while leaving others in the pool, or to return study areas of the nonpooling LEC to the pool.

<sup>48</sup> Recommended Decision at para. 130; Notice at para. 35.

the merger and acquisition context would jeopardize the benefits this Commission, the Joint Board, and the industry sought to secure for high-cost LECs and their customers by allowing the choice of continued pooling. The record indicates that the incentives underlying mergers and acquisitions, i.e., operating efficiencies or investment decisions, are different from those that would be associated with a LEC contemplating departure from the pool in the absence of the affiliate withdrawal rule, i.e., selective withdrawal of low-cost study areas or LECs. Because the LECs who select this option may not shift any study areas into or out of the pool, the potential for selective abuse of the pooling process is greatly diminished, making the possibility of undermining the pooling process speculative. As the primary purpose of the affiliate withdrawal rule is to avoid selective withdrawal, and not to prevent efficiency-enhancing mergers and acquisitions, and because our proposal might impose impediments to efficiency-enhancing mergers and acquisitions which can bring noticeable public interest benefits; accordingly, we amend Section 69.3 to provide for the possibility of LEC continued participation indefinitely in the NECA common line pool after a merger or acquisition.

D. General matters

42. The Notice proposed that any changes to the LTS or TRS payments could occur only on the date the annual access charge tariff filings become effective. No party questioned this procedure for handling the timing of the changes resulting from mergers and acquisitions. Without such a rule, the administration of the LTS and TRS programs under the revised pooling arrangements would be extremely complex. We therefore adopt it for all pooling changes resulting from such transactions, incorporating it in Section 69.3(e).

43. A second matter of general applicability raised in the comments relates to the treatment of mergers or acquisitions involving partial study areas. ALLTEL observes that the study area is the operating entity for pooling purposes and asserts that, if a study area is not split by being partially in or out of the pool, there should be no administrative problem in having both pooled and nonpooled study areas in the same corporate structure.<sup>49</sup> Contel's proposal refers to transactions involving entire study areas.<sup>50</sup> Several of the parties commenting thus view the study area as important in their assessment of the mergers and acquisition issues.

44. The study area is a basic construct of our regulatory structure and forms the basic cost center of the separations procedures. Study areas have been frozen at their November 15, 1984, boundaries.<sup>51</sup> Section 69.3(e)(7) of our rules

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<sup>49</sup> ALLTEL Reply Comments at 3.

<sup>50</sup> Contel Reply Comments at 4.

<sup>51</sup> MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, 50 Fed. Reg. 939 (Jan. 8, 1985). The regulatory concern underlying the decision to freeze study area boundaries was the prevention of the abuse of regulatory programs providing benefits to LECs possessing certain characteristics.

also addresses the use of the study area for regulatory purposes. It provides that a tariff shall not contain charges for any access elements that are disaggregated or deaveraged within a study area that is used for purposes of jurisdictional separations. Given the importance of study areas to our regulatory framework, the rules we adopt in this proceeding relate only to complete study areas.<sup>52</sup>

45. Finally, the Notice observed that the LTS rules applicable after the transition period for TRS accommodate mergers and acquisitions adequately. No party commenting has questioned this conclusion. Therefore, no action is required relating to the LTS rules applicable after the TRS transition period.

## VI. Procedural Matters and Ordering Clauses

46. The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements that are applicable to the public, and will not increase or decrease burden hours on the public.

47. We certify that the requirements contained in the Regulatory Flexibility Act<sup>53</sup> are not applicable to the rules we are adopting in this proceeding.<sup>54</sup>

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<sup>52</sup> A complete study area could, however, include a redefined study area if it is approved pursuant to a waiver proceeding under Part 36 to alter the boundaries of a frozen study area. Any merger or acquisition that involves a partial study area would require such regulatory approval of any revised study area boundaries. Of course, if a partial study area is involved in a merger or acquisition, adjustments to the 1988 base year data to reflect the transaction will be necessary to ensure that LTS and TRS amounts are properly calculated. This matter may be addressed in the Part 36 waiver proceeding.

<sup>53</sup> 5 U.S.C. §§ 601-612.

<sup>54</sup> In accordance with the provisions of Section 605 of that Act, a copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of this Report and Order in the Federal Register. Because of the nature of local exchange and access services, we have concluded that small telephone companies are dominant in their field of operation and therefore are not small entities as defined by the Regulatory Flexibility Act. See MTS and WATS Market Structure, 93 FCC 2d 241, 338-89 (1983). Thus, we are not required by the terms of that Act to apply the formal procedures set forth therein. We are nevertheless committed to reducing the regulatory burdens on small telephone companies whenever possible consistent with our public interest responsibilities. Accordingly, we have chosen to utilize, on an informal basis, appropriate procedures to analyze the effect of proposed regulations on small telephone companies. As part of our analysis of the rules adopted in this Order, we have considered the impact on small telephone companies, i.e., those serving 50,000 or fewer access lines. The rules we adopt will not have an adverse effect on those

48. ACCORDINGLY, IT IS ORDERED, pursuant to Sections 1, 4(i)-(j), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), and 403, and Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553, that Part 69 of this Commission's Rules IS AMENDED as set forth in Appendix A.

49. IT IS FURTHER ORDERED, that the Chief, Common Carrier Bureau, IS DELEGATED the authority to rule on the waiver requests described herein.

50. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy  
Secretary

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companies and should benefit such carriers through increased flexibility in common line pooling arrangements in the context of merger and acquisition activity.

## Appendix A

Part 69-Access Charges of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 69.3(e) is amended by adding the following new subsection (11):

(11) Any changes in Association common line tariff participation and Long Term and Transitional Support resulting from the merger or acquisition of telephone properties are to be made effective on the next annual access tariff filing effective date following consummation of the merger or acquisition transaction, in accordance with the provisions of Section 69.3(e)(9).

2. Section 69.3 is amended by adding the following new subsection (g):

(g) The following rules apply to telephone company participation in the Association common line pool for telephone companies involved in a merger or acquisition.

(1) Notwithstanding the requirements of Section 69.3(e)(9), any Association common line tariff participant that is party to a merger or acquisition may continue to participate in the Association common line tariff.

(2) Notwithstanding the requirements of Section 69.3(e)(9), any Association common line tariff participant that is party to a merger or acquisition may include other telephone properties involved in the transaction in the Association common line tariff, provided that the net addition of common lines to the Association common line tariff resulting from the transaction is not greater than 50,000, and provided further that, if any common lines involved in a merger or acquisition are returned to the Association common line tariff, all of the common lines involved in the merger or acquisition must be returned to the Association common line tariff.

(3) Telephone companies involved in mergers or acquisitions that wish to have more than 50,000 common lines reenter the Association common line pool must request a waiver of section 69.3(e)(9). If the telephone company has met all other legal obligations, the waiver request will be deemed granted on the sixty-first (61st) day from the date of public notice inviting comment on the requested waiver unless:

(a) the merger or acquisition involves one or more partial study areas;

(b) the waiver includes a request for confidentiality of some or all of the materials supporting the request;

(c) the waiver includes a request to return only a portion of the telephone properties involved in the transaction to the Association common line tariff;

(d) the Commission rejects the waiver request prior to the expiration of the sixty-day period;

(e) the Commission requests additional time or information to process the waiver application prior to the expiration of the sixty-day period; or

(f) a party, in a timely manner, opposes a waiver request or seeks conditional approval of the waiver in response to our public notice of the waiver

request.

3. Section 69.612 is amended by adding the following new subsection (c):

(c) Long Term and Transitional Support shall be modified to take into account mergers and acquisitions on a prospective basis. The Association shall adjust the 1988 base year data of the surviving entity or entities of any merger or acquisition to reflect the changes effected by the merger or acquisition before calculating the Long Term and Transitional Support amounts pursuant to Section 69.612(a) and (b). For this purpose, the Association shall assume that the transaction occurred prior to 1988.